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09/606,137	06/28/2000	Michael E. Moseley	500.003US1	5608
7590 06/30/2009				
Mark A Litman Mark A Litman & Associates PA York Business Center Ste 205 3209 W 76th Street Edina, MN 55402			EXAMINER ROY, BAISAKHI	
			ART UNIT 3737	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: MICHAEL MOSELEY and JOHN KUCHARCZYK

Application No. 09/606,137
Technology Center 3700

Mailed: June 30, 2009

Before Deborah L. Perry, Supervisory Paralegal Specialist, Review Team.
Perry, Supervisory Paralegal Specialist, Review Team

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on September 22, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

FINAL REJECTION

For the Record:

A review of the Final Rejection, specifically the Office Action Summary Page (Form PTOL-326) mailed on May 15, 2007, indicates that claims 5-7, 9, 11-26, 29 and 54-64 were rejected. However, the “Detailed Action” that followed (pages 2-9) are silent to the rejection of Claims 60-64.

AMENDMENT

A review of the file indicates that an Amendment was filed August 10, 2007. It is not clear from the record whether the Amendment to the claims was entered or not. Clarification is required.

APPEAL BRIEF, GROUNDS OF REJECTION

An Appeal Brief was filed October 12, 2007, and a Supplemental Appeal Brief was filed on November 26, 2007, in response to a Notice of Appeal Brief Non-Compliance (issued November 6, 2007).

A review of the Appeal Brief (October 12, 2007), appendix heading Status of Claims reveals that the Appellant does not state which claims are being appealed.

The appendix heading Grounds of Rejection is unclear and/or is not consistent with the grounds of rejection in the Final Rejection mailed May 15, 2007, because it does not include rejected Claims 60-64.

Additionally, there are inconsistencies, which appear to be typos, as identified below. Correction is required.

Inconsistencies to be Corrected

Page 13, paragraph 2, line 8:

Claims 5,6, 13, 14, 17, 18, 20, 21, 25, 26, 54, 55, 57, and 58 [should read 59]...are rejected under 35 U.S.C. 102(b) as being anticipated US Patent No. 5869463 (Major).

Page 12, paragraph 3, line 13: (is silent to claim 12)

Claims 7, 9, 11, [should include claim 12 here] 15, 16, 19, 22, 29, 56, and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Major et al. in view of Morcos et al. (5497770)

Page 12, paragraph 4, line 19:

Claim 24 (this is a typo should read 23) has been rejected under 35 USC 123(a) (this is a typo, should read 103)..

Page 12, paragraph 5, line 21:

Claim 24 is rejected under 35 U.S.C. 123(a)... (this is a typo, should read 103)...

Lastly, the appendix headings entitled Status of Claims and Grounds of Rejection.

Correction is required. Appellants may file a "paper" to correct the above identified errors.

EXAMINER'S ANSWER

The Examiner's Answer issued April 30, 2008, is silent as to rejection of Claims 60-64.

Clarification of the status of claims 60-64 is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

1) consider and/or acknowledge the Amendment After Final filed August 10, 2007;

2) hold the Appeal Brief filed on October 12, 2007 defective;

3) notify Appellant to file a "paper" correcting the Appeal Brief, (Status of Claims and Grounds of Rejection) as identified above;

4) vacate the Examiner's Answer mailed on April 30, 2008, and issue a Substitute Examiner's Answer to clarify the rejection of claim 60-64. The Examiner may do this on a PTOL-90 correcting only those required appendix sections; or

5) if appropriate, the Examiner may issue a Supplemental Examiner's Answer, for any new issues or new grounds of rejection. Reminder: all

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Supplemental Examiner's Answer must be signed by the TC Director or the designee; and

6) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/dlp/tsj

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